

the IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANTWAN HENRY,	§	
	§	
<i>Plaintiff,</i>	§	
v.	§	CIVIL ACTION NO. _____
	§	
CARRINGTON MORTGAGE	§	
SERVICES, LLC; THE BANK OF	§	
NEW YORK MELLON, F/K/A THE	§	
BANK OF NEW YORK, AS	§	
TRUSTEE FOR THE	§	
CERTIFICATEHOLDERS OF THE	§	
CWAABS, INC., ASSET-BACKED	§	
CERTIFICATES, SERIES 2006-5; THE	§	
BANK OF NEW YORK MELLON	§	
F/K/A THE BANK OF NEW YORK,	§	
AS TRUSTEE FOR REGISTERED	§	
HOLDERS OF CWABS, INC.,	§	
ASSET-BACKED CERTIFICATES,	§	
SERIES 2006-5; AND DITECH	§	
FINANCIAL LLC F/K/A GREEN	§	
TREE SERVICING, LLC,	§	
	§	
<i>Defendants.</i>	§	

NOTICE OF REMOVAL

Defendant Ditech Financial LLC F/K/A Green Tree Servicing, LLC (“Ditech”) files this Notice of Removal pursuant to federal question jurisdiction under 28 U.S.C. § 1331.

I.
INTRODUCTION

1. On October 15, 2018, Plaintiff Antwan Henry (“Plaintiff”) filed his Original Petition (“Original Petition”), in the 80th Judicial District Court of Harris County, Texas under Cause No. 2018-74113.¹

¹ Exhibit A.

2. In the Original Petition, Plaintiff asserts claims against Defendants for violations of the Fair Debt Collection Practices Act and violations of RESPA stemming from the servicing of the mortgage encumbering the real property located at 11939 Canyon Valley Drive, Tomball, Texas 77377-7636 (the “Property”). Plaintiff also seeks to quiet title and for declaratory relief preventing foreclosure of the Property and for attorneys’ fees.

3. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders, and other papers filed in the state court action and obtained by Defendant are attached hereto and marked as **Exhibit A.**

II.
TIMELINESS OF REMOVAL

4. This suit was filed on October 15, 2018 and Defendant Ditech was served with process in the state court action on October 22, 2018. Therefore, this Notice of Removal is timely in accordance with 28 U.S.C. § 1446(b) because it is filed less than thirty days from the date Ditech received a copy of the initial pleading.

III.
BASIS FOR REMOVAL: FEDERAL QUESTION JURISDICTION

5. This Court has original jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). The Original Petition asserts claims predicated on federal law, including the Fair Debt Collection Practices Act (15 U.S.C. § 1692 *et seq.*) and RESPA (12 U.S.C. § 2601 *et seq.*). Thus, this Court has federal question jurisdiction under 28 U.S.C. § 1331 because this civil action arises under laws of the United States, and therefore this action may be removed in accordance with 28 U.S.C. §§ 1441 and 1446.

6. Carrington consents to this removal.

7. Bank of New York Mellon consents to this removal.

IV.
VENUE

8. Venue is proper in the Southern District of Texas, Houston Division pursuant to 28 U.S.C. § 1441(a) because Harris County, Texas is located within this District and cases arising from Harris County, Texas are properly assigned to the Southern District of Texas.²

V.
ADDITIONAL REQUIREMENTS

9. Plaintiff has not demanded a jury trial.

10. Written notice of removal will be provided to Plaintiff and filed with the District Clerk of Harris County, Texas contemporaneously with this pleading.

Having satisfied the requirements for removal under 28 U.S.C. §§ 1331, 1441, and 1446, Ditech gives notice that Cause No. 2018-74113, now pending in the 80th Judicial District Court of Harris County, Texas, has been removed to this Court.

² 28 U.S.C. § 124(d)(4).

Respectfully submitted,



By: /s/ S. David Smith

S. DAVID SMITH
Texas Bar No. 18682550
Fed. I.D. No. 14233
sdsmit@bradley.com

Bradley Arant Boult Cummings LLP
600 Travis Street, Suite 4800
Houston, Texas 77002
(713) 576-0300 Telephone
(713) 576-0301 Telecopier

***ATTORNEY IN CHARGE FOR DEFENDANT
DITECH FINANCIAL LLC***

OF COUNSEL:

MELISSA S. GUTIERREZ
Texas Bar No. 24087648
Fed. I.D. No. 2255351
mgutierrez@bradley.com
Bradley Arant Boult Cummings LLP
600 Travis Street, Suite 4800
Houston, Texas 77002
(713) 576-0300 Telephone
(713) 576-0301 Telecopier

CERTIFICATE OF SERVICE

I certify that on this 20th day of November, 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. I further certify that a true and correct copy of the foregoing has been served on all counsel/parties of record as follows:

Via C.M.R.R. #9314869904300053145158
& Regular Mail

Antwan Henry
11939 Canyon Valley Dr.
Tomball, TX 77377-7636
281-995-7735
Plaintiff Pro Se

Via email: charles.townsend@akerman.com; walter.mcinnis@akerman.com

ginny.webb@akerman.com

C. Charles Townsend
Walter McInnis
Ginny E. Webb
Akerman LLP
2001 Ross Avenue, Suite 3600
Dallas, TX 75201
214-720-4300
214-981-9339 (Fax)
*Attorneys for Carrington Mortgage Services, LLC and
The Bank of New York Mellon, As Trustee*

/s/ S. David Smith

S. David Smith